

IN THE HIGH COURT OF JUDICATURE AT PATNA

M.A No.14 of 2003

DIVISIONAL MANAGER, NATIONAL INSURANCE CO. LTD.
BHAGALPUR, P.S. KOTWALI, DISTRICT-BHAGALPUR.

Versus

1. JHALO DEVI, W/O. LATE BUDHU PASWAN 2. NAVIN PASWAN, SON
OF LATE BUDHU PASWAN, 3. MANOJ PASWAN, SON OF LATE
BUDHU PASWAN 4. NISHU KUMARI, D/O LATE BUDHU PASWAN 5.
SUDHA DEVI, W/O. FEKU PASWAN, ALL ARE RESIDENT OF VILLAGE
MUSTAFAPUR, P.O.- PURAINI, P.S.- JAGDISHPUR, DISTRICT-
BHAGALPUR, 6. AFTAB KAMAL, S/O. K.F. AMALUDDIN, VILL-
PURAINI, P.S.-JAGDISHPUR, DIST.-BHAGALPUR, 7. ARUN KUMAR
SINGH, S/O- INDRA SINGH, VILLAGE – MUSTAFAPUR, P.S. –
JAGDISHPUR, DISTRICT – BHAGAPLUR.

12/ 30.09.2008

This appeal has been filed by the Divisional Manager, National Insurance Co. Ltd., Bhagalpur, for setting the judgment dated 17.06.2002 and award signed on 19.07.2002 by 3rd Additional District Judge-Cum-Motor Accident Claim Tribunal, Bhagalpur, in Claim Case no. 55 of 2001, wherein the learned Tribunal has allowed the claim petition filed by Jhalo Devi and others, wife and legal heirs of late Budhu Paswan and directed the appellant to pay Rs. 2, 66, 700/- (Two lakhs sixty six thousand seven hundred only), loss of consortium, etc, along with interest and as such award has been prepared for more than Rs, 3,00,000/-.

As per claim petition the deceased Budhu Paswan as a labourer of the tractor on 17.05.2001 along with other colleagues were coming from Bhagalpur to Jagdishpur after loading of stone-chips and iron rods on the

tractor bearing registration No. BR 10B 9207 with its attached trailer. When the said tractor reached near Jamni More, all of a sudden hook of the trailer broke out of which Budhu Pawan received a fatal injury on his person and subsequently died on the spot.

A police case was registered vide Jagdishpur P.S. Case No. 67 of 2001 against the driver of the said Tractor under Section 279, 304A IPC. Post mortem of the deceased Budhu Paswan was conducted in J.L.N. Medical College and Hospital, Bhagalpur.

Budhu Paswan was a Hindu male of 35 years old, died leaving behind his parents, wife, brothers, and sisters. The deceased used to load and unload the goods on the vehicle on contract basis with the support of his few colleagues. He used to earn a sum of Rs. 100/- to 120/- per day on an average earning of Rs. 2400/- per month and his dependents were deprived of such earning and hence they filed claim petition.

The appellant National Insurance Co. Ltd. filed written statement, raising normal objection regarding maintainability etc., on facts as well law.

It has been stated that the tractor concerned was being plied in violation of the conditions of limitation in the insurance policy for use as laid down in the M.V. Act, and, hence, the accident cannot be said to be covered by the policy, on account of high speed, in which the tractor was running.

It was also stated that the tractor was used, driven, plied otherwise than in accordance with the laid down conditions of policy and, therefore, the liability for this on appellant cannot be fastened. The driver of

the offending tractor with trailer No. BR 10B 9864 involved in this case has neither appeared in the court nor filed original driving license.

Opposite party No. 1 Aftab Kamal owner of the vehicle filed written statement denying claim of the claimants for several reasons. He admits ownership of the tractor and trailer and submitted that driver of the vehicle had effective driving license and that it was covered under the insurance policy of National Insurance Co. Ltd., Bhagalpur, vide Policy No. 2000/9700/39 effective from 12.07.2000 to 11.07.2001 which was a comprehensive one and the insurer indemnified the risk of the owner as well as the third parties so Insurance Company was liable to pay compensation.

The learned court has framed issues and Issue Nos. 3 and 4 being as to whether the tractor concern was being driven rashly and negligently, appellants were entitled to receive compensation from the Insurance Company.

Ext. 3 is the Xerox copy of the insurance cover. Carbon copy of the said insurance cover lying with the record.

Ext. A is an investigation report in respect of the accident submitted to the Divisional Manager, National Insurance Co. Ltd., Bhagalpur by its surveyor wherein it is stated that driver had valid license of L.M.V. the validity of which was up to 21.03.2002 and monthly income of the deceased was Rs. 2,000/- who was 35 years old. He has also given policy number of the insurance policy.

From the averments of the petition of claim, it is manifest that the deceased Budhu Paswan along with other colleagues were coming from

after loading of Iron Rods and Stone Chips on the said tractor bearing registration No. BR-10B/9207 attached with trailer and all on a sudden, hook of the trailer was broken out due to rash and negligent driving and as such deceased Budhu Paswan received fatal injury and died. The deceased was a labour of said vehicle on contract basis.

Now, the point which has been raised here is that tractor which was insured was used for commercial purpose, not for the agriculture purpose, and for loading or unloading of stone chips and Iron Rods, the deceased was deployed as a labourer by the owner of the tractor. Carbon or Xerox copy of the insurance policy does not reveal that tractor was to be used for commercial purposes. The carbon copy of the insurance cover appears to be more legible. It is manifest that period of insurance commenced from 11.07.2000 to 10.07.2001. The Registration number of the vehicle was not disclosed rather Column XIII shows it Mahindra tractor Insurance No. SBB 1439, Chassis No. SBB 1439 Model- Mahendra & Mahendra, M-2000 HP 40, sum insured Rs. 2,70,000/- (Two lakhs seventy thousand only).

Column-I reveals foodgrain, fertilizers only.

So from the aforesaid insurance cover, it is not disclosed as to which of the trailer bearing registration number was insured with tractor or not. It is also not disclosed as to whether it was insured for the commercial use or for agriculture use. But, the fact is that the tractor met accident causing death of Budhu Paswan, when it was laden with stone chips and Iron Rods, which cannot be said to be in use for the agriculture purpose.

The reason assigned in the impugned order, fastening liability on

the shoulder of the insurance company to pay compensation for such commercial use does not appear to be convincing. At the same time, the insurance company also has not come with clean hands so as to show that it has insured the tractor bearing registration no. BR 10B 9207, which was meant exclusively for agriculture purpose and only for the driver of the tractor and that there was no provision for ensuring of gratuitous passenger or labourers employed for commercial purposes.

In the facts and circumstances, the impugned order stands set aside and for that the insurance company and owner as well as claimants, if they so chose, may lead evidence before the Tribunal so as to clarify the situation for the purpose of determining the liability to make compensation to the claimants, whether by the owner or by the insurance company, within six months from the date of the passing of this order and the case is remitted to the Tribunal for fresh verdict.

With the aforementioned directions and observations, this appeal stands allowed after setting aside the impugned judgment and award.

Sanjeet

(Subash Chandra Jha, J.)

